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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

FADOK, MARK A

ART UNIT

PAPER NUMBER

3625

NOTIFICATION DATE

DELIVERY MODE

03/17/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@SLWIP.COM

request@slwip.com

Office Action Summary

Application No.

10/749,431

Applicant(s)

GROVE ET AL.

Examiner

MARK FADOK

Art Unit

3625

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-25 and 27-41 is/are pending in the application.
- 4a) Of the above claim(s) 37-41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-25 and 27-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Response to Amendment

The examiner is in receipt of applicant's response to office action mailed 9/2/2009 which was received 12/2/2009. Acknowledgement is made to the amendment to claims 17,28,33,35 and 36, and the cancellation of claims 26. The amendment obviated the USC 101 rejection and applicant's arguments overcome the USC 112 rejection, however, the amendment and arguments were not persuasive therefore the previous rejection is restated below modified as necessitated by amendment..

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17-25,27-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over McBrayer in view of Official Notice.

In regards to claim 17, McBrayer discloses a method comprising: receiving a question associated with a listing for an item during an auction price-setting process (FIG 22 depicts that the RFQ process includes an auction price setting process and FIG 23 item 548 shows the means for asking a question

Art Unit: 3625

during the auction which effectively sets a price based on the criteria established during the auction);

McBrayer teaches that a buyer authorizes an answer to a question by providing an indication from a buyer (col 10, lines 37-50), but does not specifically mention that the person providing the answer is the seller. The examiner takes official notice that providing information to a buyer from a seller was old and well known in that art at the time of the invention. Therefore, it would have been obvious to try, by one of ordinary skill in the art at the time of the invention to incorporate into the system of McBrayer providing answers from a seller since there are a finite number of predictable solutions (having a buyer or a seller respond to question in a buyer driven or seller driven auction) to the recognized need (informing the bidder of information relative to the auction) and one of ordinary skill in the art could have pursued the known potential solution with a reasonable expectation of success (the benefit of providing a bidder with information is well known).

Also, it is noted that McBrayer discloses the claimed invention except it is the buyer posting the answer rather than the seller. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the seller the functionality to correspond with the buyer as is defined by McBrayer, since it has been held that a mere reversal of parts involves only routine skill in the art. In *Re Einstein*, 8 USPQ 167.

Art Unit: 3625

selectively providing the answer to the question based on the indication, the providing of the answer being performed by a module implemented by a processor of a machine and including publishing the answer on the listing for the item computer(col 10, lines 37-50).

In regards to claim 18, McBrayer teaches the receiving of the question including receiving the question over a communications network (FIG 1).

In regards to claim 19, McBrayer teaches the receiving of the question including receiving the question via an electronic mail message (col 9, lines 35-45).

In regards to claim 20, McBrayer teaches including receiving the question from a bidder (col 10, lines 37-50).

In regards to claim 21, McBrayer teaches including receiving the question from the seller (see response to claim 1).

In regards to claim 22, McBrayer teaches comprising providing the question in conjunction with the providing of the answer (FIG 24).

In regards to claim 23, McBrayer teaches the providing of the question including publishing the question on the listing for the item (FIG 23, RFQ web

Art Unit: 3625

page has posted questions and answers associated with the listed RFQ up for bid, see item 550).

In regards to claim 24, McBrayer teaches the providing of the answer including providing the answer over a communications network (col 13, lines 9-15, provided from web site via web browser).

In regards to claim 25, McBrayer teaches the providing of the answer including providing the answer via an electronic mail message (col 10, lines 37-50).

In regards to claim 27, McBrayer teaches comprising receiving the answer from the seller over a communications network (col 10, lines 37-50).

In regards to claim 18, McBrayer discloses a system comprising:
a processor coupled to a memory through a bus; and
instructions to be executed from the memory by the processor to cause the processor to perform operations comprising:
receiving receive a question associated with a listing for an item during the auction price-setting process,
receiving an indication from a seller to authorize provision of an answer to the question, and

Art Unit: 3625

selectively providing the answer to the question based on the indication by publishing the answer on the listing for the item (see response to claim 1).

In regards to claim 29, McBrayer teaches the question being received over a communications network (see response to claim 19).

In regards to claim 30, McBrayer teaches the question being received via an electronic mail message (see response to claim 19).

In regards to claim 31, McBrayer teaches the question being received from a bidder (see response to claim 20).

In regards to claim 32, McBrayer teaches the auction price-setting process causing the processor to provide the question in conjunction with the providing of the answer (FIG 24).

In regards to claim 33, McBrayer teaches including publishing the question on the listing for the item (see response to claim 1).

In regards to claim 34, McBrayer teaches including providing the answer over a communications network (see response to claim 24).

Art Unit: 3625

In regards to claim 35, McBrayer discloses a system comprising:

means for receiving a question associated with a listing for an item during an auction price-setting process;

means for receiving an indication from a seller to authorize provision of an answer to the question; and

means for selectively providing the answer to the question based on the indication by publishing the answer on the listing for the item (see response to claim 1).

In regards to claim 36, McBrayer discloses a machine-readable medium comprising instructions, which when implemented by one or more processors, cause the one or more processors to perform operations comprising:

receiving a question associated with a listing for an item during an auction price-setting process;

receiving an indication from a seller to authorize provision of an answer to the question; and

selectively providing the answer to the question based on the indication by publishing the answer on the listing for the item (see response to claim 1).

Response to Arguments

Applicant's arguments filed 12/2/2009 have been fully considered but they are not persuasive.

Applicant argues that McBayer does not teach "publishing the answer on the listing for the item". The examiner disagrees and directs the applicant to the rejection *supra* which clearly points out the reasons why McBayer teaches the feature in question.

Applicant argues that there was not an articulated reasoning involving the use of official notice in the rejection of the claims. Please note that the use of Official Notice is only used for the feature involving the buyer sending questions to a seller and the seller responding to the questions. As clearly explained McBayer teaches functionality to send a question from a seller to a buyer and having the buyer respond to the question. The examiner used an obvious to try rationale which is described in MPEP 2141[R-6] III. As an alternative to the Obvious to Try rationale the examiner also provided a court case, *In Re Einstein*, 8 USPQ 167 which explains that a reversal of parts requires only routine skill in the art. The reversal being using the functional parts of McBayer to allow a buyer to ask a question of a seller and permitting the seller to post the question and answer to the web site so other buyers might see the question and answer.

Applicant further argues that the limitations in the independent claims were not addressed. The examiner disagrees and notes that the rejection provided on 9/2/2009 clearly articulated that McBayer taught all the features except that McBayer's system involves a buyer responding to a sellers questions

Art Unit: 3625

and the instant claims involve a buyer sending a seller a question. To clarify that the independent claims are rejected with **McBrayer** except where a claim involves a seller responding to a question from a buyer, the examiner has mapped the instant claims to the **McBrayer** reference.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **571.272.6755**. The examiner can normally be reached **Monday thru Friday 8:00 AM to 5:00 PM**.

Art Unit: 3625

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Jeffrey Smith** can be reached on **571.272.6763**.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, Va. 22313-1450

or faxed to:

571-273-8300

[Official communications; including

After Final communications labeled

"Box AF"]

For general questions the receptionist can be reached
at 571.272.3600

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from the

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Should

you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Mark Fadok/

Mark Fadok

Primary Examiner, Art Unit 3625

